

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

Larry M. Banks,

Case No. 2:23-cv-01629-GMN-DJA

Plaintiffs,

Order

V.

Albertson's Deal & Delivery; and Vivek Sankaran,

Defendants.

Pro se Plaintiff Larry M. Banks filed an application to proceed *in forma pauperis*. (ECF No. 1). However, Plaintiff's application is missing certain information. The Court thus denies Plaintiff's application without prejudice.

I. Discussion.

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action “without prepayment of fees or security therefor” if the plaintiff submits a financial affidavit that demonstrates the plaintiff “is unable to pay such fees or give security therefor.” The Ninth Circuit has recognized that “there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn [*in forma pauperis*] status.” *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees, but he must demonstrate that because of his poverty he cannot pay those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

The applicant's affidavit must state the facts regarding the individual's poverty "with some particularity, definiteness and certainty." *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have the discretion to make a factual inquiry into a plaintiff's financial

1 status and to deny a request to proceed *in forma pauperis*. See, e.g., *Marin v. Hahn*, 271
2 Fed.Appx. 578 (9th Cir. 2008) (finding that the district court did not abuse its discretion by
3 denying the plaintiff's request to proceed *in forma pauperis* because he "failed to verify his
4 poverty adequately"). "Such affidavit must include a complete statement of the plaintiff's
5 personal assets." *Harper v. San Diego City Admin. Bldg.*, No. 16-cv-00768 AJB (BLM), 2016
6 U.S. Dist. LEXIS 192145, at *1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient
7 grounds for denying an *in forma pauperis* application. Cf. *Kennedy v. Huibregtse*, 831 F.3d 441,
8 443-44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on
9 *in forma pauperis* application).

10 On his application, Plaintiff claims to make no money from employment, have no bills,
11 have no property of any kind, have no dependents, and to have no debts. On the docket, Plaintiff
12 includes an address. The Court takes judicial notice of the fact that public records reveal that the
13 address appears to be an apartment building. Plaintiff does not provide any details in the
14 application regarding how he pays rent, how he pays utilities or other bills, or how he lives
15 considering his claim to have no money and no bills. The Court finds that Plaintiff has omitted
16 information from the application. As a result, the Court cannot determine whether Plaintiff
17 qualifies for *in forma pauperis* status.

18 The Court will give Plaintiff one opportunity to file a complete *in forma pauperis*
19 application. The Court further orders that Plaintiff may not respond with "not applicable" in
20 response to any question without providing an explanation for each of the questions. Plaintiff
21 also may not leave any questions blank. Plaintiff must describe each source of money that he
22 receives, state the amount he received, and what he expects to receive in the future.

23 The Court denies Plaintiff's *in forma pauperis* application without prejudice. The Court
24 gives Plaintiff 30 days to file an updated application. Plaintiff must fully answer all applicable
25 questions and check all applicable boxes. Plaintiff may alternatively pay the filing fee in full.
26 Since the Court denies Plaintiff's application, it does not screen the complaint at this time.

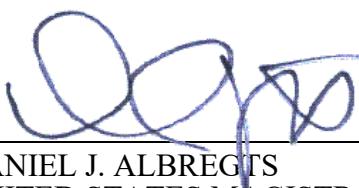
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1 **IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma*
2 *pauperis* (ECF No. 1) is **denied without prejudice**.

3 **IT IS FURTHER ORDERED** that Plaintiff has until **November 16, 2023** to file an
4 updated application to proceed *in forma pauperis* as specified in this order or pay the filing fee.
5 Failure to timely comply with this order may result in a recommendation to the district judge that
6 this case be dismissed.

7 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to mail Plaintiff
8 a copy of this order and of the Long Form application to proceed *in forma pauperis* and its
9 instructions.¹

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11 DATED: October 17, 2023



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE

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¹ This form and its instructions can also be found at <https://www.nvd.uscourts.gov/court-information/forms/> under Code AO 239.
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